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SUPREME COURT OF THE UNITED STATES

October Term, 1927.

No. 106

UNITED STATES STEEL PRODUCTS COMPANY, Claimant and Owner of the Steamship "STEEL TRADER," et al.,

Petitioners,

against

DONALD J. ADAMS,

Libelant Respondent.

BRIEF FOR LIBELANT RESPONDENT.

EUGENE S. HAYFORD,

Counsel for Libelant Respondent.

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BRIEF FOR LIBELANT RESPONDENT.

STATEMENT OF CASE.

This case comes here on a Writ of Certiorari to the Circuit Court of Appeal for the Fifth Circuit, granted November 1, 1926.

The writ seeks to review a decree of the United States Circuit Court of Appeals for the Fifth Circuit made

May 13, 1926, which affirmed a decree in favor of Adams in the United States District Court for the Eastern District of Louisiana, rendered December 31, 1925, by Judge Louis H. Burns, and signed January 31, 1926.

The only question involved in this case is the construction given to R. S. 4527. The facts of this case were undisputed, the case involving a question of law. The scale of wages as fixed by the articles is not questioned, the duration of the voyage is fixed and undisputed and that libelant is a seaman is unquestioned, therefore, we are only concerned with one question, and that is, whether or not Revised Statute 4527 is applicable to this case; we think not. Petitioners contend otherwise.

A review of the opinions rendered by Judge Burns of the U. S. District Court, we think, is convincing that he was extremely painstaking, giving careful thought to this case, and was thorough in his research, and both opinions were identical in thought and reasoning. The three judges of the United States Circuit Court of Appeals for the Fifth Circuit after hearing argument and a careful study of all the authorities submitted by Petitioners (Appellants there) made a decree confirming the decree of Judge Burns of the District Court.

Counsel for Petitioners in their brief have referred to various authorities on the question of interpretation of statutes, all of which authorities, so cited, have no refer-

ence whatsoever to the case at bar. The very words of the statute may be taken to describe Libelant Adams:

> "A seaman who has signed an agreement and is afterwards discharged before one month's wages are earned, without fault on his part justifying such discharge, and without his consent * * *."

The interpretation that counsel would place upon the statute would read out of existence, specific conditions upon which the application of the statute depends.

We think the first condition of the statute *contemplates a voyage before the commencement of which the seaman is wrongfully discharged.* And that the second condition is not predicated upon *an immediate voyage* as where in sailing vessels days, often ships would lay at anchor in harbor due to calms, adverse winds, storms, awaiting orders, docking, bending sails, setting up rigging or otherwise delayed (statute enacted 1872), it being a common occurrence in "that day" for a vessel to ship her crew many days in advance of actual departure on the contemplated voyage, and the seaman is wrongfully discharged before the month's wages are earned.

We think that Congress never intended that the statute would apply after the commencement of the voyage, as well as before the commencement of a voyage. If such had been the case the first clause of the statute reading:

> "Any seaman who has signed an agreement and is afterwards discharged before the commencement of the voyage,"

would have no doubt been omitted, or the statute would have specified that the extra compensation should be paid as damages for the breach upon a wrongful discharge "*before one month's wages are earned.*"

We believe that R. S. 4527 was enacted to give immediate relief and clear up the confusion that existed in maritime law in reference to the rights of seamen who had signed an agreement for a voyage and afterwards discharged before the commencement of a voyage, without fault on their part, and a careful reading of the act, particularly Section 21 of the original statute (Act June 7, 1872, 17 Statute 266) containing sixty-eight sections regulating the employment, discipline and discharge of seamen, we think is convincing.

Congress, in enacting the statute (R. S. 4527) with respect to wrongful discharge of seamen, no doubt intended the fixing of penal compensation for breach of the seamen's contract (Shipping Articles), and it is apparent that Congress in passing this act had in mind the confusion existing in the law regulating the discharge of seamen before the voyage began, as will be noted from a review of the decisions of the Admiralty Courts and the early text writers. As to the seaman's discharge after the commencement of the voyage, there can be no doubt as to his right to recover in an action either at common law or by a libel in admiralty for a breach of contract (Shipping Articles) as the circumstances of the case would justify.

The seaman did not require that Congress enact additional legislation *in his interest* as respect to his rights after the commencement of a voyage, and as the statute is silent as to any provision with respect to wrongful discharges happening after the commencement of the voyages, or after one month's pay had been earned; it must be apparent that Congress only intended that the statute apply to a claim for wages arriving before the commencement of the voyage and before one month's wages has been earned. It is significant that the act makes no provision for sustenance or return passage of the seaman to port of departure, therefore it must be presumed that the lawmakers intended the act only to apply to seamen at port of departure "before the commencement of the voyage."

If Congress had intended, or the Court should interpret the act to read as claimant and appellant would have your Honors interpret it, then in order for the seaman to escape its provisions, he must have signed an agreement and afterwards been discharged without fault on his part after the commencement of the voyage and after he had earned one month's wages, but if discharged within this period (thirty days) regardless of whether the voyage had begun or not, and regardless of what ports of call were made or the distance from the home port, the seaman may be so dismissed or the expense incurred by him for maintenance and return passage, then and in that event, he would come within its provisions.

To put such a construction on the statute would, we think, make it inoperative, in view of the conditions existing in connection with the employment of seamen on American ships operating out of American ports, for the reason that "to-day" ninety-nine ships out of a hundred (comparatively fast ships) begin the voyage before one month's wages can possibly be earned, and to hold that seamen can be dismissed under the statute (4527) after the commencement of the voyage any time within the thirty days, thereby ignoring the "commencement of the voyage clause," would be to ignore the intent of the statute; all the usages and customs of "Maritime Law," as well as the ruling decisions of all the Courts of Admiralty, which Courts have always distinguished the respective right of the seaman to compensation for the breach of his contract of employment before as well as after the voyage began. Counsels in their original brief (in the Circuit Court of Appeals, pgs. 15-16) recognize this distinction in the early maritime decisions cited, particularly *Marine Ordinances of France, Book III, Title IV, Article X, p. XXVII, Vol. 4, Peters Admiralty Decisions*:

> "If a Master dismiss a mariner without a sufficient cause before the voyage begun, he must pay him one-third of his wages; and if after the voyage is begun, he shall pay his whole wages, together with his charges for returning to place of his departure."

Article III of the same book of ordinances, provided (2 Peters, p. XXX):

"If by the *fault* of the owners, the master or merchants, a voyage be broken before departure of the ship, the seamen hired for the voyage shall be paid for the time taken up in rigging and equipping the ship, *and have one-fourth of their wages.* (Italics ours.)

Counsels also cited in their brief in the United States Circuit Court of Appeals, *Article XLI of the Laws of the Hause Towns, Vol. 1, Peters Admiralty Decisions, p. CV*:

"If a mariner behaves himself ill the master may turn him off; *but if he discharges him for no reasons* before the voyage begins, he shall pay him *a third part of his wages*, but shall not charge it in the ship's account." (Italics ours.)

We believe that Congress in passing the statute of June 7, 1872, (8Stat. 266) had in mind the principles of maritime law embodied in the rules of law just cited and the relief afforded by R. S. 4527, was no doubt intended as temporary compensation for breach of the seamen's contract before the commencement of the voyage, and as in the rule of law last cited had no thought of the rights of the seamen after the commencement of the voyage.

We further call your Honors' attention to the authorities cited on pages 31 and 32 of counsel's Circuit Court of Appeals (petitioners') brief, viz:

"RIGHTS AND DUTIES OF MERCHANT SEAMEN," by CURTIS, BOSTON (1841).

PARSONS in VOL. 1, p. 50, "LAW OF SHIPPING" (1869).

A reading of the Laws of Shipping before the enactment of the statute, particularly Flanders, Parsons, Dixon, Abbott, will show into what confusion this question had come. It is safe to presume, therefore, that the lawmakers enacted Revised Statute 4527 to clear up that confusion and to provide an equitable immediate relief for the dismissed seamen.

We think none of the cases cited by Petitioners are in any way applicable or decisive of the question at bar. We are in full accord with the opinions of the various Courts in all the cases so cited, and it will be noted in reading the cases cited by Petitioners that where R. S. 4527 was applied or referred to, same was so applied in cases of wrongful discharge before the commencement of the voyage, and in others the seamen had not been discharged at all and therefore the statute did not apply. In other cases the statute was referred to by analogy where the voyage was of short duration and damages assessed accordingly, though the statute had no direct application.

In the case of *CALVIN v. HUNTLEY*, 178 *Mass.*, *p.* 29, the Court was concerned with the jurisdiction of seamen's claim for wages, and in no way with the interpretation of the statute as here applied.

In all of the cases on questions involving breach of the seaman's contract, after the beginning of the voyage, the Judges sitting in Courts of Equity have never applied Section 4527 of the Revised Statutes, and we do not find, and counsel cites no authorities, holding that an Admiralty Judge ever interpreted the statute (4527) to apply *to a breach of a seaman's contract* after the voyage had begun.

Rule applied by English Admiralty Courts.

In the British Trade (Asp. Mar. Cas. 16 Vol. N. S. 296) (January 21 and 28, 1924.)

The Merchants' Shipping Act of 1894 was before the Court in a case in which suit had been brought by the captain and chief engineer for wages for the entire voyage, and in passing on this case the Court said:

> "The maritime lien is not confined to wages actually earned on board ship, but may attach in respect of wages which the seaman might have earned had he been permitted to continue to serve."

In the Beaver (3 Rob. 92), Lord Stowell said, in that case, where a mariner had been put ashore on the African coast on a voyage from Liverpool to Africa and back:

> "That the wages recoverable were those due for the whole voyage."

In The Camilla (Swabey 312) (1886), Dr. Lushington applied the same rule in decreeing payment of wages

from date of discharge to the time within the contract period.

Citing the Magna Charta, 2nd Law 136; The Mary Ann, 13 L. T. Rep. 384, L. Rep. 1. A. & E. 8.

The Blessing, 3 Asp. Mar. Cases, 561.

Roscoe Admiralty Practice, 4th Edition, p. 250.

The rule applied by the English Admiralty Courts is clearly cited in *"THE ELIZABETH"*, 2 *Dods Admiralty Reports*, 403, Lord Stowell in this case said:

"Nothing can be more generally or more peremptorily laid down, than that a master discharging a seaman wrongfully is answerable for the whole wages of the voyage of that ship."

American Admiralty Decisions.

In *"THE WHITE SEAL,"* 194 *Federal*, 402, District Judge Wolverton held that libelant discharged without cause from the position of chief engineer before the end of his contract term and entitled to recover his earnings.

Dec. Dig. Seamen, No. 26.

Judge Wolverton's decision in the *WHITE SEAL* was confirmed by Circuit Court Judges Gilbert and Ross and in the decision rendered the statute (4527) is not referred to and the decree is in full accord with the decree in this case.

In the *CITY OF NEW ORLEANS*, 33 *Fed.*, 683, Judge Pardee in deciding that case made no reference to R. S. 4527 and in the case of *J. P. Leathers*, 74 *Fed.* 845, the statute was not referred to.

In the case of *WILSON v. MANHATTON CANNING COMPANY*, 210 Fed. 900, the Court in that case said:

> "The contention that R. S. 4527 applies to this case and that libelant cannot in any event recover more than one month's wages under the findings upon the facts cannot be sustained."

This section provides:

> "Any seaman who has signed an agreement and is afterwards discharged before the commencement of the voyage or before one month's wages are earned—shall be entitled to receive from the master—in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation."

In passing on the above cause District Judge Neterer held:

> "The voyage having commenced, and the libelant not having been discharged, this section has no application."

And he further stated that the "*STAGHOUND*" and "*GAMECOCK*", 97 *Fed.* 973, *the ST. PAUL*, 77 *Fed.* 998, and *Raymond v. Ella S. Thayer*, 40 *Fed.* 902, are readily distinguished. (*Staghound* and *Gamecock* relied on by petitioners here.)

In the *ALASKA STEAMSHIP COMPANY v. GILBERT*, 236 *Fed.* 715-717, the Court there held that the discharge of the seamen at a port of call who had signed for a complete voyage was improper, and a decree was rendered giving seaman full wages for the voyage, and full compensation for his expenses and return fare to port of shipment. Circuit Judge Hunt in confirming the decree of District Judge Neterer in the above case said:

> "As the opinion of the District Court clearly states the facts in this case, we affirm the decision of Judge Neterer on the merits and append his opinion, which opinion in part reads:
>
> "He has brought this action to recover the wages for the trip, expenses necessarily incurred to return to Seattle and $500.00 damages. No hours of employment were mentioned in shipping articles * * *. Under the circumstances the mate should have dealt with the libelant in a more indulgent spirit * * * I think the libelant should recover his wages for the trip, the $16.00 fare expended, and $35.00 to reimburse him for the outlay which was occasioned at Juneau, Alaska."

In *JENKINS, et al. v. UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION*, 268 *Fed.* 870, was a suit involving seamen's wages. District Judge Neterer in passing on this case made no mention of R. S. 4527, but held:

> "The seamen were discharged through no act of commission or omission which would warrant such discharged. This was not the port of final dis-

charge, and the seamen were not requested to continue on the voyage under the articles, but were requested to sign new articles for a new voyage. The vessel by its own conduct fixed the status of the men with relation to this proceeding, and they are entitled to their wages and board during detention and transportation to New York to such as desires to go to New York."

In an early admiralty case, *HUTCHINSON v. COOMBS*, *Wares Report*, 65, Judge Ware decreed wages for the whole voyage as measure of damage, and further held that the intermediate earnings of the seamen were to be deducted, not from his wages, but from the expenses of his return.

Flanders in his works on shipping, Volume 5, says:

"By Act of Congress 1825, Congress struck out directly at the unlawful discharge of seamen abroad by providing penalty for refusing to bring the seamen home. The master has a right under the general Maritime Law to discharge a seaman in a foreign port, but it must be done for a sufficient cause."

Mr. Justice Story in an early admiralty case in construing shipping articles (seaman's contract) in the case of JAMES SHEPPARD, et al. v. LEMUEL TAYLOR, reported 5th Pe ers, p. 709, passed on the rights of seamen to wages for duration of the voyage in a case of wrongful discharge. Mr. Justice Story in a long opinion which covers many points involved in admiralty law, said in part, as follows:

"The first question is whether in point of fact the libelants have sustained the allegations in the libel and petition in respect to the voyage, viz., their ignorance of the intended illicit trade * * * which is necessary to maintain their claim for wages. And we are of the opinion that the evidence upon these points is conclusive, that the seamen were the victims of an illicit voyage, for which they never intended to contract, and in which they had no voluntary participation.

"Such then being the state of facts, the law upon the subject is very clear. It is, that the seamen are entitled to full wages *from the time of their shipping on the voyage to the time of their return to the United States; deducting their advanced wages, and whatever they have earned* (if any) in any intermediate employment. This is the general rule in Courts of Admiralty in cases of this nature; where the libelant seeks nothing beyond compensation in the nature of wages. To this extent the seamen are entitled to a decree against the owners; had the ship been specifically restored. There is no doubt that the seamen might have proceeded against it in the admiralty, in a suit *in rem*, for the whole compensation due to them. They have by the Maritime Law an undisputed lien to this extent. This lien is so sacred and indelible that it has, on more than one occasion been expressly said, that it adheres to the last plank of the ship." (1st Peters Admiralty Reports.) Note 186, 195. The Neptune 1st Hagg. Admiralty Reports, 227 239."

In UNITED STATES v. CUTTIN, 1st Sumner, 304, "I think" observed JUDGE STORY:

"That the right of discharge arises only under extraordinary emergencies and in extreme cases, when otherwise the safety of the officers or crew or the ship's discipline would be put in jeopardy. The mere convenience of the master would not justify a discharge, much less offenses as could be ordinarily suppressed by the common punishment administered in sea service."

In view of the above rule of law, it is inconceivable to think that the Congress of the United States would enact a statute giving the right of discharge of a seaman without fault on his part at a port far distant from the port of departure and without sustenance or transportation, on the payment of a single month's wages to the seamen. (Wages of seamen being $18.00 per month at the time.)

In the case of *ENOCHASSON v. FREEPORT SULPHUR COMPANY, et als.*, decided by *District Judge Hutcheson* in the District Court for the Southern District of Texas, 7 Fed. Report., p. 674:

"The discharge of seamen compelled to leave the ship through illness incapacitating him, without fault on his part, does not release the ship or its owners * * * and that where a seaman during a voyage to a particular port was incapacitated by illness in service without fault on his part his right to wages was not limited to a termination of the voyage in the course of which the incapacity arose, but he was entitled to recover wages to the end of his contract, in addition to maintenance and cure up to that time."

District Judge Hutcheson in further passing on the case said:

> "These principles are that a seaman is to an extent bound to his ship in a kind of personal indenture, and the ship is in return bound to him for his wages, his maintenance, and cure. That the obligations of this indenture are mutual and continue through the term of the employment."

And so in the case of **LONGSTREET v. STEAMBOAT R. R. SPRINGER** (District Court), 4 Fed. 671, the Court there held:

> "I understand the law to be that, where a seaman is injured in service of the boat, without fault on his part, he is entitled to recover his full wages for the trip for which he has engaged and the expense incurred in his cure."

If the above principle of law is applicable to seamen who are dismissed without fault on their part and due to illness during a voyage, it certainly should be applicable to a seaman who is dismissed without fault on his part after the commencement of the voyage, especially in such a case as the one at bar.

In The Waverly (E. D. Wisconsin) Fed. Case, No. 17391, (June, 1877), Judge Dyer said, in construing R. S. No. 4527:

> "* * * The remedy given to seamen by sections 4526 and 4527 R. S. is not *exclusive* but *cumulative* merely. The provisions of Section 6 of the Act of 1790, (1st Stat., 131), are incorporated substantial-

ly into Sections 4526 and 4527 of the present Revised Statutes, it is to be observed also that the language at the end of Section 4527 is in substance identical with that at the end of section 6 of the act of 1790.

"Favorable argument may be made in favor of the proposition that it was the intention of Congress in passing that act to put seamen upon a different footing from that occupied by other parties. * * *

"There are however decisions upon the question so direct, and which emanate from sources so eminent that they can hardly be disregarded; one of these decisions is found in the case of The W. W. Wright (Case No. 9,983), and the other in the case of Wm. Jarvis (Case No. 17,697 Mass.) (Italics ours.)

Judge Sprague in that case said:

"* * * And surely we ought not to go in search of arguments for giving strained construction against the seaman of a statute which does him injustice by *curtailing the remedies* which jurisprudence of all countries give him and we must bear in mind that we are dealing with remedies for collection of debts." (Italics ours.)

We think that counsel's "THIRD POINT" is not borne out by the judicial history of R. S. 4527, particularly the decisions of the United States Courts, the English Court, or the Admiralty Courts in general, on questions involving breach of seamen's contract (shipping articles). Nor do we think that Counsels' "FIRST POINT" is

well taken in view of the history of Section R. S. 4527. Mr. Conger, the author of the bill, states: pg. 1836 Congressional Globe (1872).

> "The object of the bill, as indicted in its title, is to protect seamen by legal regulations as to the mode of their shipping and discharge, in lack of any laws now existing on the subject."

And Senator Stockton in quizzing supporters of the bill remarked: (pgs. 37, 34, C. G. 1872).

> "It is fifty pages of the code of laws to govern the merchant marine. It is an alteration of the rules of the Court of Admiralty. It is an alteration of the contracts between seamen and their employers. * * *"

On page 40 of Counsels' brief filed herein, the following significant admission is made:

> "Many of the sections were debated but Section 21 was not touched on in the debate."

And Mr. Bruns, of counsel, stated in his argument before the United States Circuit Court of Appeals that a careful search of the "Congressional Record" had been made and nothing that would assist the Court in determining the case had been found, and we fail to see where any member of Congress who participated in the preparation of the bill placed a construction on its provisions in any way contrary to the interpretation placed thereon by Judge Burns of the United States District Court, or by the three judges of the United States Circuit Court of

Appeals for the Fifth Circuit in deciding this case as they have done.

The Civil Law Rule.

Congress in passing the statute (R. S. 4527) virtually adopted the "Civil Law." Article 2749 of the Civil Code of Louisiana declares:

> "Dismissal Without Just Cause. If without any serious ground of complaint, a man should send away a laborer whose service he has hired for a certain time, before that time has expired, he shall be bound to pay such laborer the whole of the salaries which he would have been entitled to receive, had the full term of his service arrived."

The Supreme Court of Louisiana in Trefethen v. Locke, et als., reported in 16th Louisiana Annual, p. 19, in passing on Art. 2749 of the Civil Code stated:

> "This article of the Code is in the nature of a penal statute and should be strictly construed."

And in Lloyd vs. Dickson, et als., reported in 121 La., Reports pg. 919, that Court said:

> "Revised Civil Code Art. 2749 is in the nature of a penal statute, and has no application to a contract for the letting and hiring entirely unperformed in all of its parts, and that for the breach of such executory contracts only actual damages can be recovered."

The import being that where the laborer had actually performed any part of the labor for which he had hired out, that he was entitled on dismissal to his wages until the full term of his services arrived just as a master

discharging a seaman wrongfully is answerable for the whole wages of the voyage of that ship.

The Circuit Court of Appeals for the Fifth Circuit in affirming the decree in favor of libelant Adams in the United States District Court for the Eastern District of Louisiana has not in any way departed from the weight of authority as established by the decision of the United States Courts, the English Admiralty Courts, nor from the general rule in the Courts of Admiralty in cases of this nature, but has defined an important Federal statute according to well established principles of maritime law and have followed the established tenets of the Civil Law as well.

We believe a review of decided cases involving questions of breach of seamen's contracts, including the cases herein cited will disclose the fact that libelant is entitled to have his wages continue at the contract rate until the end of the voyage. That the wages for the interval of time between his forced cessation of work and the completion of the voyage should operate as liquidated damages for the wrongful breach of his contract, and it is eminently just that he should be compensated by an award of wages as liquidated damages.

The decision of the Circuit Court of Appeals for the Fifth Circuit should be affirmed.

Respectfully submitted,

EUGENE S. HAYFORD,

Counsel Libelant Respondent.

Nov. 1927.